



February 7, 2003

## SENATE BILL No. 209

DIGEST OF SB 209 (Updated February 5, 2003 4:15 PM - DI 103)

**Citations Affected:** IC 8-1; noncode.

**Synopsis:** Merchant power plants. Requires a person seeking to construct a merchant power plant in Indiana to file a petition with and receive siting approval from the utility regulatory commission (IURC). Allows the IURC to approve the siting of a merchant power plant if the plant will not be adverse to the interests of local residents and all Indiana citizens. Specifies factors that the IURC must consider in acting upon a siting petition. Requires a petitioner to demonstrate that it has considered: (1) brownfields; (2) sites of existing or former utilities; and (3) sites identified for power plant and heavy industrial use in local plans; for the siting of the merchant power plant. Requires a petitioner to provide the IURC an assessment of the potential effect of a merchant power plant on its proposed water resource. Requires a petitioner to file with the IURC certain financial instruments and an estimate of the expenses associated with decommissioning the merchant power plant upon closure. Requires the IURC to hold a hearing and receive testimony upon each petition to site a merchant power plant. Requires a merchant power plant to submit certain reports to the IURC upon receiving siting approval. Allows the IURC to revoke its approval of a merchant power plant if the plant does not operate in accordance with the IURC's order of approval. Provides that information concerning a merchant power plant's fuel arrangements or electric sales is not a public record. Requires the state utility forecasting group to conduct an annual power market study to assess the regional needs for and effects of merchant power plants.

**Effective:** Upon passage.

**Gard**

January 9, 2003, read first time and referred to Committee on Utility and Regulatory Affairs.

February 6, 2003, amended, reported favorably — Do Pass.

SB 209—LS 6863/DI 101+



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February 7, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## SENATE BILL No. 209

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON  
3 PASSAGE]:

4 **Chapter 8.4. Merchant Power Plant Certification and Siting**

5 **Sec. 1. As used in this chapter, "brownfield" has the meaning set**  
6 **forth in IC 13-11-2-19.3.**

7 **Sec. 2. (a) As used in this chapter, "merchant power plant"**  
8 **means an electric generating facility all or a designated part of**  
9 **which is used for the production and sale of electric energy**  
10 **exclusively into the wholesale power market or to other utilities,**  
11 **energy service providers, or power marketers within or outside**  
12 **Indiana.**

13 **(b) The term does not include a cogeneration facility (as defined**  
14 **in IC 8-1-2.4-2(c)) or plants owned by any of the following:**

15 **(1) A corporation organized and operating under IC 8-1-13.**

16 **(2) A nonprofit Indiana corporation most of whose members**  
17 **are organized and operating under IC 8-1-13.**

SB 209—LS 6863/DI 101+



(3) A joint agency created and operating under IC 8-1-2.2.

(4) A municipally owned utility.

Sec. 3. As used in this chapter, "need" means a commission finding supported by the evidence that the proposed facility will meet the demand of the regional power market. The commission shall request evidence from the petitioner that demonstrates the existence of market conditions supporting the construction of a merchant power plant selling electric energy in the wholesale market at competitive rates.

Sec. 4. As used in this chapter, "person" means any corporation, company, partnership, limited liability company, individual, association of individuals, or their lessees, trustees, or receivers appointed by a court.

Sec. 5. As used in this chapter, "petitioner" means a person that files with the commission a petition under this chapter to site a merchant power plant.

Sec. 6. Any person that owns, operates, manages, or controls a merchant power plant in Indiana is a public utility (as defined in IC 8-1-2-1(a)).

Sec. 7. (a) A person may not begin to construct a new merchant power plant by significantly altering a site to install permanent equipment or structures unless the person files a petition with and obtains approval from the commission under this chapter.

(b) The commission shall issue a decision approving or denying a petition under this chapter within two hundred seventy (270) days after the filing of the petitioner's case in chief. The commission may suspend the running of the two hundred seventy (270) day period if the commission finds that:

(1) the petitioner did not file its case in chief in sufficient detail to allow the commission to begin a review of the request;

(2) the petitioner materially altered the petitioner's case in chief after its filing;

(3) an order compelling production by the petitioner of discovery has not been satisfied within the time provided in the order; or

(4) the commission temporarily lacks jurisdiction over the proceeding due to the filing of an interlocutory judicial appeal of a commission ruling or order.

The suspension ends and the two hundred seventy (270) day period continues to run as soon as the petitioner cures the cause for suspension.



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(c) A person filing a petition under this chapter shall publish a notice of the filing in a newspaper of general circulation published in the county in which the proposed merchant power plant will be sited.

**Sec. 8.** The commission may approve the siting of a merchant power plant if the commission determines that the siting of the merchant power plant is not adverse to the interests of:

- (1) the citizens of Indiana in general; and
- (2) the citizens of the locality where the proposed merchant power plant will be sited.

**Sec. 9.** The commission shall consider the following when acting upon a petition under this chapter:

- (1) The need for the merchant power plant.
- (2) The location of the merchant power plant.
- (3) The ownership or transfer of ownership of the merchant power plant.
- (4) The management of the merchant power plant.
- (5) The financing of the merchant power plant.
- (6) The capacity of the merchant power plant.
- (7) The type and size of the merchant power plant.
- (8) The type of fuel used by the merchant power plant.
- (9) The merchant power plant's fuel supply arrangements and their effect on the reliability of Indiana's electrical system and the price and availability of the fuel for other uses in Indiana, taking into account the effects of other merchant power plants.
- (10) The merchant power plant's potential electric supply contracts.
- (11) The merchant power plant's impact on the electric and gas transmission systems serving Indiana.
- (12) The merchant power plant's impact on:
  - (A) water supplies and usage, taking into account the impacts of other merchant power plants using the same or interconnected sources of water; and
  - (B) current users of the merchant power plant's sources of water.
- (13) Local ordinances and area plans.
- (14) Oral and written testimony received by the commission under section 13 of this chapter.
- (15) The results of the study required under section 20 of this chapter.
- (16) Other factors that the commission considers relevant in



making a determination under this chapter.

Sec. 10. The petitioner must provide documentation to the commission that it has thoroughly considered the feasibility and economics of the following types of sites:

- (1) Brownfield sites that are isolated from populated areas.
- (2) Sites of existing or former utilities that can be replaced or repowered.
- (3) Other sites identified for power plant and heavy industrial development in local land use plans before the initiation of site selection for the merchant power plant.

Sec. 11. A petitioner shall provide to the commission an assessment of the proposed merchant power plant's effect on the water resource and its users. The assessment shall be prepared by a licensed professional geologist (as defined in IC 25-17.6-1-6.5) or an engineer license under IC 25-31-1. The assessment must include, but not be limited to, the following information:

- (1) Sources of water supply.
- (2) Total amount of water to be used by the merchant power plant from each source.
- (3) Location of wells or points of withdrawal.
- (4) Ability of the water resource to meet the needs of the merchant power plant and other users.
- (5) Ability of the water resource to meet the future needs of the county in which the proposed merchant power plant will be located.
- (6) Alternative sources of water supply.
- (7) Conservation measures proposed by the petitioner for reducing the merchant power plant's effect on the water resource.
- (8) Studies evaluating the availability of and most practical method of withdrawal, development, and use of the water resource.
- (9) A method for metering or other reasonable measuring of water withdrawals and reporting of the measurement to the commission.
- (10) Any other information related to water resource assessment the commission may require.

Sec. 12. (a) If a person files a petition with the commission under this chapter or any other law for the siting of a merchant power plant, the person must establish proof of financial responsibility by filing one (1) of the following financial instruments or a combination of the following financial instruments with the



commission at the time, either before or after commission approval of the petition, that shall be determined by the commission:

- (1) A surety bond.
- (2) A letter of credit.
- (3) A certificate of insurance.
- (4) A financial test.
- (5) A corporate guarantee.
- (6) Any other financial guarantee approved by the commission.

(b) The petitioner shall prepare a cost estimate that contains a detailed estimate of the costs associated with fully decommissioning the facility and returning the site to its prior condition.

(c) The financial instrument selected and used by the petitioner under this section must be sufficient to cover costs contained in the cost estimate.

(d) The petitioner must submit a copy of current cost estimates and the financial instrument to the commission for approval within sixty (60) days of the approval by the commission of the petition.

Sec. 13. (a) Not later than thirty (30) days after the petitioner has prefiled the petitioner's case in chief with the commission for the siting of a merchant power plant under this chapter, the commission shall conduct a hearing at a location in the county in which the merchant power plant is proposed.

(b) The commission shall send notice of the hearing by first class mail not later than ten (10) days before the hearing to the following:

- (1) Relevant state regulatory agencies, as determined by the commission.
- (2) Zoning and area plan authorities for the:
  - (A) county; and
  - (B) municipality, if any;
 where the merchant power plant is proposed.

(3) Record owners of real property located within one-half (1/2) mile of the proposed site for the merchant power plant. However, at the commission's discretion, the commission may notify record owners of real property located within two (2) miles of the proposed site in sparsely populated areas.

(c) The commission shall cause notice of the hearing to be published in a newspaper of general circulation in each county in which the merchant power plant is proposed. The publication required under this subsection must occur once a week for two (2) weeks, with the second publication occurring not later than fifteen



(15) days before the date of the hearing.

(d) The commission shall accept written and oral testimony from any person who appears at the public hearing.

(e) The commission shall make a record of the hearing and all testimony received. The commission shall make the record available for public inspection.

**Sec. 14. Following the approval of a petition by the commission, the merchant power plant shall submit the following to the commission:**

(1) At least one (1) week before commencement of construction activities, a startup report that includes the:

(A) status of necessary permits; and

(B) expected in service date.

(2) A midpoint report, to be submitted at a time determined by the commission, that includes information concerning the:

(A) status of construction; and

(B) expected in service date.

(3) A testing notice not later than two (2) weeks before any testing of the merchant power plant.

(4) At the time of the initial commercial operation of the merchant power plant, an in service notice that includes the following:

(A) Information identifying all contracts for firm sales of power to utilities both within and outside Indiana.

(B) A summary of fuel contracts, including any pipelines involved in the transactions.

(C) Any contingency plans detailing response plans to emergency conditions as required by state or local units of government, transmission owners, or any regional transmission grid operator.

(D) The merchant power plant's certified dependable capacity rating.

(5) Not later than thirteen (13) months after the in service date, a first year report that includes the following:

(A) Summer and winter dependable capacity ratings.

(B) The annual capacity factor, including the summer and winter seasonal capacity factor.

(C) The hours of operation for each season.

(D) Total annual, peak day, and summer seasonal water usage and discharge.

(E) An itemization of transmission load restrictions or other operational restrictions incurred during the year.



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(F) The number of employees employed by the merchant power plant.

(6) Other information requested by the commission.

**Sec. 15.** Following approval of a petition for the siting of a merchant power plant by the commission, the petitioner must:

(1) notify the commission upon becoming an affiliate of any regulated Indiana utility selling electricity at retail to Indiana consumers;

(2) obtain prior commission approval for the sale of electricity to an affiliate that is a regulated Indiana retail utility, except for electricity purchased by the affiliate on the wholesale spot market;

(3) obtain prior commission approval of any transfers of ownership of the merchant power plant or its assets;

(4) obtain commission approval before altering the capacity of or significantly altering the size of the merchant power plant; and

(5) obtain commission approval before altering the type of fuel used by the merchant power plant.

**Sec. 16.** After notice and hearing, the commission may withdraw its approval for the siting of a merchant power plant if the petitioner or subsequent owner or operator:

(1) fails to commence construction of the merchant power plant within two (2) years of the date of the commission's order of approval and is no longer diligently pursuing the commencement of construction of the merchant power plant; or

(2) fails to complete construction of the merchant power plant within five (5) years of the date of the commission's order of approval.

**Sec. 17. (a)** A person that receives commission approval of the siting of a merchant power plant under this chapter or any other law, or the subsequent owner or operator of the merchant power plant for which siting approval is given, must operate the merchant power plant in accordance with the commission's order of approval.

**(b)** If the commission finds that the merchant power plant is not operating in accordance with the commission's order of approval, the commission may:

(1) order an investigation; and

(2) revoke the approval after the investigation, a hearing, and the conclusion of any appeals in the matter.



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1       **Sec. 18. (a) Notwithstanding IC 8-1-2.5-5, the commission may**  
 2       **not decline to exercise its jurisdiction under this chapter with**  
 3       **respect to the siting approval of a merchant power plant. However,**  
 4       **the commission may adopt rules under IC 4-22-2 to establish**  
 5       **procedures for the exercise of its jurisdiction under this chapter**  
 6       **based on the type, size, or fuel resource of the merchant power**  
 7       **plant.**

8       **(b) Whenever the commission substantially declines its**  
 9       **jurisdiction under IC 8-1-2.5 with respect to a merchant power**  
 10       **plant and its developer, the developer may not exercise the powers**  
 11       **conferred under IC 4-20.5-7-10.5, IC 5-11-10-1(c)(1), or IC 8-1-8-1,**  
 12       **or any other rights, privileges, or immunities conferred by law on**  
 13       **electric utilities assigned service areas under IC 8-1-2.3 on account**  
 14       **of the obligation of electric utilities assigned service areas under**  
 15       **IC 8-1-2.3 to serve the general public without undue discrimination**  
 16       **at regulated rates and charges.**

17       **(c) Except as provided by federal law, the commission has sole**  
 18       **and exclusive jurisdiction over the siting and location of utility**  
 19       **facilities, including merchant power plants.**

20       **Sec. 19. Information pertaining to:**

21               **(1) fuel arrangements or contracts; or**  
 22               **(2) electric sales and contracts;**  
 23       **of merchant power plants that are approved by the commission**  
 24       **under this chapter or any other law is not a public record under**  
 25       **IC 5-14-3.**

26       **Sec. 20. The commission shall direct the state utility forecasting**  
 27       **group established by IC 8-1-8.5-3.5 to conduct an annual regional**  
 28       **power market study to assess:**

- 29               **(1) the need for merchant power plant additions in the region;**  
 30               **(2) the effect of merchant power plants on the price of fuels**  
 31               **used by merchant power plants;**  
 32               **(3) the effect of merchant power plants on the price of**  
 33               **electricity;**  
 34               **(4) the effect of merchant power plant construction and**  
 35               **operation on the deployment of demand side resources**  
 36               **regionally and in Indiana;**  
 37               **(5) the amount of merchant power plant capacity contracted**  
 38               **to Indiana electric utilities;**  
 39               **(6) the amount of merchant power plant capacity contracted**  
 40               **to out-of-state marketers and electric utilities; and**  
 41               **(7) other issues the commission considers relevant.**

42       **SECTION 2. [EFFECTIVE UPON PASSAGE] (a) As used in this**



1     **SECTION, "commission" refers to the Indiana utility regulatory**  
2     **commission established by IC 8-1-1-2.**

3         **(b) A petitioner that files for commission approval of the siting**  
4     **of a merchant power plant before the effective date of this act is**  
5     **not subject to IC 8-1-8.4, as added by this act.**

6         **SECTION 3. An emergency is declared for this act.**

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Utility and Regulatory Affairs, to which was referred Senate Bill No. 209, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 12, delete "However, for purposes of sections 2 through 18 of this".

Page 1, delete lines 13 through 17.

Page 2, line 9, delete "substantial evidence that:" and insert **"the evidence that the proposed facility will meet the demand of the regional power market. The commission shall request evidence from the petitioner that demonstrates the existence of market conditions supporting the construction of a merchant power plant selling electric energy in the wholesale market at competitive rates."**

Page 2, delete lines 10 through 21.

Page 2, line 32, after "construct a" insert **"new"**.

Page 2, line 37, delete "not earlier than two hundred seventy" and insert **"within two hundred seventy (270) days after the filing of the petitioner's case in chief. The commission may suspend the running of the two hundred seventy (270) day period if the commission finds that:**

- (1) the petitioner did not file its case in chief in sufficient detail to allow the commission to begin a review of the request;**
- (2) the petitioner materially altered the petitioner's case in chief after its filing;**
- (3) an order compelling production by the petitioner of discovery has not been satisfied within the time provided in the order; or**
- (4) the commission temporarily lacks jurisdiction over the proceeding due to the filing of an interlocutory judicial appeal of a commission ruling or order.**

**The suspension ends and the two hundred seventy (270) day period continues to run as soon as the petitioner cures the cause for suspension."**

Page 2, delete line 38.

Page 3, line 23, after "plant's" insert **"potential"**.

Page 3, line 24, delete "effect" and insert **"impact"**.

Page 3, line 26, delete "effect" and insert **"impact"**.

Page 3 line 28, delete "effects" and insert **"impacts"**.

SB 209—LS 6863/DI 101+



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Page 4, delete lines 6 through 42 and insert the following:

**"Sec. 11. A petitioner shall provide to the commission an assessment of the proposed merchant power plant's effect on the water resource and its users. The assessment shall be prepared by a licensed professional geologist (as defined in IC 25-17.6-1-6.5) or an engineer license under IC 25-31-1. The assessment must include, but not be limited to, the following information:**

- (1) Sources of water supply.**
- (2) Total amount of water to be used by the merchant power plant from each source.**
- (3) Location of wells or points of withdrawal.**
- (4) Ability of the water resource to meet the needs of the merchant power plant and other users.**
- (5) Ability of the water resource to meet the future needs of the county in which the proposed merchant power plant will be located.**
- (6) Alternative sources of water supply.**
- (7) Conservation measures proposed by the petitioner for reducing the merchant power plant's effect on the water resource.**
- (8) Studies evaluating the availability of and most practical method of withdrawal, development, and use of the water resource.**
- (9) A method for metering or other reasonable measuring of water withdrawals and reporting of the measurement to the commission.**
- (10) Any other information related to water resource assessment the commission may require."**

Page 5, delete lines 1 through 11.

Page 5, line 15, after "one (1) of the following" insert **"financial instruments"**.

Page 5, line 15, after "combination of the following" insert **"financial instruments"**.

Page 5, delete lines 19 through 42, begin a new line block indented and insert:

- "(1) A surety bond.**
- (2) A letter of credit.**
- (3) A certificate of insurance.**
- (4) A financial test.**
- (5) A corporate guarantee.**
- (6) Any other financial guarantee approved by the commission.**



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**(b) The petitioner shall prepare a cost estimate that contains a detailed estimate of the costs associated with fully decommissioning the facility and returning the site to its prior condition.**

**(c) The financial instrument selected and used by the petitioner under this section must be sufficient to cover costs contained in the cost estimate.**

**(d) The petitioner must submit a copy of current cost estimates and the financial instrument to the commission for approval within sixty (60) days of the approval by the commission of the petition."**

Page 6, delete lines 1 through 12.

Page 6, line 14, delete "testimony" and insert **"the petitioner's case in chief"**.

Page 8, line 39, after "to" insert **"the siting approval of"**.

Page 9, line 4, delete "IC 6-1.1-8-1".

Page 9, line 38, delete "Except as provided in subsection (c), a" and insert **"A"**.

Page 9, delete line 42.

Page 10, delete lines 1 through 17.

and when so amended that said bill do pass.

(Reference is to SB 209 as introduced.)

MERRITT, Chairperson

Committee Vote: Yeas 9, Nays 0.

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